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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	NMLS ID.: 248548
)	
THE COMMISSIONER OF BUSINESS)	STATEMENT OF ISSUES
OVERSIGHT,)	
)	
Complainant,)	
)	
v.)	
)	
KEVIN D. MCGILL,)	
)	
<u>Respondent.</u>)	

The Commissioner of Business Oversight (“Commissioner” or “Complainant”) alleges and charges the McGill Kevin D. McGill (“McGill” or “Respondent”) as follows:

I.

INTRODUCTION

The proposed order seeks to deny the issuance of a mortgage loan originator license to McGill pursuant to Financial Code section 50141 in that McGill fails to demonstrate the requisite financial responsibility, character, and general fitness due to previously having had disciplinary action for trust fund violation by the California Bureau of Real Estate (“BRE”, formerly known as the Department of Real Estate), providing false answers on the Form MU4 application submitted in connection with the mortgage loan originator license and due to a prior bankruptcy.

II.**THE APPLICATION**

1. On December 27, 2016, McGill filed an application for a mortgage loan originator license with the Commissioner pursuant to the California Residential Mortgage Lending Act, (Fin. Code, § 50000 et. seq.), in particular, Financial Code section 50140. The application was for employment as a mortgage loan originator with or working on behalf of Senior Advantage Association located at 1000 Van Ness Avenue, Suite 104, San Francisco, California 94109. The application was submitted to the Commissioner by filing Form MU4 through the Nationwide Mortgage Licensing System & Registry (NMLS).
2. In submitting his application, McGill answered “yes” to question (A)(1) on the Form MU4, which specifically asked: “Have you filed a personal bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past 10 years?”
3. Supporting documentation provided by McGill of his bankruptcy shows that on May 3, 2010, he was granted a Chapter 7 discharge under the Bankruptcy Code (11 U.S.C. § 727).
4. In addition, McGill initially answered “no” to questions (K) (1) through (8) on Form MU4, which specifically asked:
- (K) Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:
 - (1) found you to have made false statement or omission or been dishonest, unfair or unethical?
 - (2) Found you to have been involved in a violation of a financial services-related business regulation(s) or statute(s)?
 - (3) found you to have been a cause of a financial-service related business having its authorization to do business denied, suspended, revoked or restricted?
 - (4) Entered an order against you in connection with a financial services-related activity?
 - (5) revoked your registration or license?
 - (6) denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial service-related business or restricted your activities?
 - (7) barred you from association with an entity regulated by such

commissions, authority, agency, or officer, or from engaging in a financial services-related business?

(8) issued a final order against you based on violations of any law or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

5. McGill answered “yes” in response to question (K) (9) which on Form MU4 form, which specifically asked:

(K) Has any State or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization (SRO) ever:
...

(9) entered an order concerning you in connection with any license or registration?

6. In providing a response to the Event Explanation Detail Item 2 of 3 on Form MU4, McGill disclosed a 60-day suspension of his real estate broker license from the BRE and stated, “I was not given a fine or anything else.” McGill did not disclose any other suspension or fine by BRE.

7. In submitting his application on Form MU4, McGill was attesting to and swearing that the answers were true and complete to the best of McGill’s knowledge.

III.

REAL ESTATE LICENSE SUSPENSION

8. A review of the BRE public license information on its website revealed that a BRE audit in 2009 into McGill’s real estate brokerage firm know as White Diamond Real Estate resulted in disciplinary action for trust fund violation. The BRE audit found that McGill was required to but failed to maintain a separate client trust fund. Instead, McGill maintained one regular bank account wherein client funds were deposited and distribution were made from that account.

9. The BRE determined that the bank account was not designated as a client trust account as required by regulation, that McGill failed to maintain control records on the bank account as required by regulation, and McGill failed to maintain separate records for the bank account. The BRE determined that McGill’s clients had no method of ascertaining their balances and that the BRE had no means of ascertaining whether the client’s balance was correct or means to reconcile the account.

10. Furthermore, the BRE found that two signatories on the bank account did not have real estate licenses and neither had a surety bond as required by regulation. The BRE determined that the failure to maintain a client trust account and have only licensed and bonded signatories of the bank account left his clients vulnerable to theft, attachment and mismanagement of their funds.

11. On July 6, 2010, as a result of the BRE findings, a disciplinary hearing was held before an Administrative Law Judge of the Office of Administrative Hearings. A Proposed Decision was rendered on August 12, 2010 wherein McGill's real estate broker license was ordered suspended for 60 days and McGill was ordered to pay to the BRE the cost of the audit which totaled \$7,188.50. By Order on September 15, 2010, the Proposed Decision became effective on October 7, 2010. On December 11, 2012, the BRE suspended indefinitely the real estate broker license issued to McGill for the failure of Responded to pay the cost of the audit.

IV.

AMENDED APPLICATION

12. After a review of the BRE records, the Commissioner instructed McGill to amend the MU4 application for mortgage loan originator license and to provide a detailed explanation with supporting documentation regarding the BRE suspension.

13. Thereafter, on January 30, 2017, McGill amended his response to questions (K)(2), (K)(3), (K5), (K)(6), (K)(9) from "no" to "yes," but again did not disclose that the real estate broker license was suspended indefinitely. McGill's response in the MU4 application regarding why he did not comply with the Order to pay for the cost of the audit was that since he had mailed his license back to BRE he believed that he was not responsible to pay for the costs of the audit. A review of the BRE Order that suspended indefinitely McGill's real estate broker's license does not reveal that McGill could avoid paying the fine by simply mailing back his license.

14. In submitting the January 30, 2017 amended application, McGill was attesting to and swearing that the answers were true and complete to the best of McGill's knowledge.

15. Documentation and information obtained by the Commissioner during the application process revealed that on December 11, 2012, the real estate broker license of McGill was suspended indefinitely for failure of McGill to pay the fine of \$7,188.50.

V.

CHARACTER OF THE APPLICANT

16. Financial Code section 50141 provides in relevant part:

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

...

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

...

17. McGill's prior bankruptcy, suspension of his real estate broker license and false responses on the application for a mortgage loan originator license show McGill's failure to demonstrate such financial responsibility, character and general fitness as to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as a mortgage loan originator.

18. McGill initially submitted false responses to question (K) regarding actions by state or federal regulatory agencies against him. The August 12, 2010 Proposed Decision, which became effective October 7, 2010, shows that there was in fact a finding that McGill failed to maintain a client trust account as required by regulation in connection with his real estate brokerage firm.

19. Furthermore, the BRE violation led to an indefinite suspension of McGill's real estate broker's license and a fine.

20. Finally, after amending Form MU4, McGill continued to omit the fact that the suspension was for an indefinitely time, not merely 60-days and that there was a fine assessed. Such incorrect responses on the initial and amended Form MU4 were false and misleading.

VI.

CONCLUSION

The Commissioner finds, by reason of the foregoing, that McGill fails to demonstrate such character and general fitness as to command the confidence of the community and to warrant a determination that he will operate honestly, fairly, and efficiently as a mortgage loan originator.

WHEREFORE IT IS PRAYED that the mortgage loan originator application filed by Kevin D. McGill on December 27, 2016 be denied.

JAN LYNN OWEN
Commissioner of Business Oversight

By PAUL YEE
Senior Counsel